

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**D.T.E. 04-84**

**Letter Request of Competitive Energy Services – Massachusetts, LLC**

**Initial Comments of The Berkshire Gas Company**

**January 11, 2005**

**I. OVERVIEW**

In D.T.E. 04-84, issued November 12, 2004 (the “Order”), the Department solicited comments from interested parties regarding the question of whether to require local gas distribution companies (“LDCs”) to “make available to licensed gas agents and suppliers certain information about commercial and industrial natural gas customers, including capacity assignment numbers.” The Order was issued in response to a letter request submitted by Competitive Energy Services – Massachusetts, LLC (“CES-M”) filed on July 14, 2004 that specifically requests the Department direct all LDCs to make available the names, addresses, usage levels and the capacity assignment numbers of their commercial and industrial customers in electronic format on a quarterly basis. The Berkshire Gas Company (“Berkshire” or the “Company”) appreciates the opportunity to offer comments on this issue and to assist the Department in evaluating the merits of establishing such a protocol.

As an initial matter, the Company notes that it has long been committed to implementing proactive steps to promote a fully competitive gas market for all customers and has offered transportation service in some capacity since the mid-1990s. To this end, Berkshire has facilitated the transition to a competitive market with a variety of outreach activities directed to both natural gas consumers and natural gas suppliers. In its effort to educate customers about competition and choice, Berkshire has met with hundreds of customers to introduce unbundling and discuss the new options available to all customers. The Company has also incorporated

customer choice materials within its “Welcome Package” for new customers, where detailed information and a list of current natural gas marketers is provided.

Berkshire remains committed to the full development of natural gas competition. The Company will continue its efforts to work constructively with customers and marketers to address the questions and concerns associated with customer choice.

## **II. REGULATORY BACKGROUND**

The Company has been an active participant in the Massachusetts Natural Gas Collaborative since its inception in 1997. This collaborative process, applied in NOI-Gas Unbundling, D.T.E. 98-32, resulted in the establishment of unbundled rates for all of Berkshire’s customers and related guidelines for the implementation of such unbundling, such as mandatory capacity assignment and generic distribution service terms and conditions (“T&C”) which are consistent throughout the Commonwealth. The Company’s T&C were designed after a collaborative settlement process to provide a comprehensive framework for all business practices related to customer choice. Importantly, a range of natural gas marketers participated in the process that resulted in consensus, negotiated T&C. This negotiation resulted in an express agreement on how LDCs are to treat customer usage information. Specifically, Section 24.4 of the T&C addresses access to customer information:

The Supplier shall be responsible for obtaining the necessary authorization from each Customer prior to requesting the Company to release the Company’s historic usage information specific to that Customer to such Supplier. Such authorization shall consist of (i) letter of authorization; (ii) third-party verification; or (iii) a customer-initiated call to an independent third-party, consistent with 220 C.M.R. §11.05. The Company shall be required to provide the most recent twelve (12) months’ of a Customer’s historic usage data to a Supplier, provided that the Supplier has received the appropriate authorization as set forth above. This information shall be provided in electronic form.

Importantly, for the past four years customers have been successfully relying upon these express T&C provisions.

CES-M's unilateral letter request describes the requirements established in the Massachusetts electric industry and then, without evidentiary support and contrary to the terms of a settlement process, asserts that these procedures are appropriate for the natural gas industry. In D.T.E. 01-54, the Department opened a formal investigation in the electric industry with the intent of exploring ways "to minimize or eliminate any barriers to competitive choice." D.T.E. 01-54, at 1-2 (2001). In the Department's Initial Order issued on June 29, 2001, each electric distribution company was directed to provide competitive electric suppliers and electricity brokers access to a "Customer Information List" that included the name, address and rate classification of each default service customer supplier upon execution of an agreement not to use the customer information for "any purpose other than to market electricity-related services." D.T.E. 01-54, at 1-6 (2001). The Department also requested comments on a proposal to make certain load and credit information to marketers for customers that "have affirmatively authorized the distribution company to do so." D.T.E. 01-54, p. 8. This proposed process was essentially an "opt-in" procedure for customers.

Subsequently, in D.T.E. 01-54-A issued on October 15, 2001, the Department reviewed the comments submitted in response to its initial request. The Department instead elected to expand the Customer Information List material to be made available to marketers to incorporate additional data such as customers' historic usage information, meter read cycle, service and mailing addresses, as well as customer contact persons, if available. D.T.E. 01-54-A, p. 13. Essentially, the Department adopted an "opt-out" process whereby bill messages and bill inserts were utilized to educate customers and allow them the opportunity to "opt-out" of having their information shared with suppliers before the commencement of sharing the Customer Information List. The policy change was implemented based upon the finding that the value of promoting greater competition outweighed customer privacy concerns, particularly given the ability of customers to "opt-out" of this process. The Department did not permit credit or

income-related information sharing based either upon the availability of such information from alternative sources or for policy reasons. Id. at 14-15.

### **III. COMMENTS**

The CES-M letter request seeks a material change to a negotiated settlement derived with substantial natural gas marketer participation. CES-M has not carried its burden of demonstrating that such departure is necessary (or that, if necessary, such change outweighs any costs or burdens associated with implementation). Moreover, the CES-M letter request does not address the risks associated with such a change in terms of potential harm to LDC's and remaining LDC customers. Given these failures, the Department should not direct any change to the negotiated LDC T&C.

#### **A. The Proposed Revision to T&C is Not Necessary**

The Company submits that the sharing of customer usage levels and capacity assignment numbers may not be necessary, particularly to implement any mass marketing strategy by natural gas marketers. First, by virtue of providing a customers' rate class, the Company is, in fact, providing substantial and meaningful insight into customer usage level and pattern. The Company's commercial and industrial ("C&I") customers are disaggregated into seven rate classes based upon annual usage and load factor. C&I customers with low load factors reflect customers whose summer usage is less than 30% of their annual usage. There are three low load factor classes as follows: G-41, small, low load factor, is available to C&I customers whose annual usage is less than 10,000 therms; G-42, medium, low load factor, is available to C&I customers whose annual usage is between 10,000 therms and 60,000 therms; and, G-43, large, low load factor, is available to customers whose annual usage is greater than 60,000 therms. The high load factor rates are available to customers whose summer usage is 30% or greater of their annual usage. There are four high load factor classes as follows: G-51,

small, high load factor, is available to C&I customers whose annual usage is less than 10,000 therms; G-52, medium, high load factor, is available to C&I customers whose annual usage is between 10,000 therms and 60,000 therms; G-53, large, high load factor, is available to customers whose annual usage is greater than 60,000 therms; and, T-54, extra-large, high load factor, is available to customers whose minimum throughput is 1,000 therms per day or greater, and/or has annual usage of greater than 1,000,000 therms. Simply put, marketers can discern substantial information with respect to customer usage solely from the identity of its rate classification.

Also, the Company believes it is not necessary to provide a Customer List with usage levels and capacity assignment numbers because the current system of data exchange is efficient and manageable and the existing practice has worked well for all parties. Currently, all customer transactions (customer signups, customer drops, usage histories, total contract quantities ("TCQs"), switching services, etc.) are performed electronically through the "Electronic Data Interchange" ("EDI") that had been established in the Collaborative process. Berkshire utilizes Energy Services Group ("ESG") as its third-party EDI provider. In late 2001 the Company was recognized as the first LDC in the Northeast to successfully implement electronic data interchanges with suppliers. Pursuant to the T&C, suppliers provide a customer's account number and meter number as verification of the customer's authorization for the supplier to receive their information or to initiate service. This practice addresses customers' legitimate concerns with respect to unauthorized enrollments or "slamming." When a supplier electronically requests a customer's historical information, they are provided with the customer's name, service address, previous 12 months' usage, the customer's TCQ for capacity assignment purposes, cycle billing code and applicable gate station information.

As described above, the current EDI data exchange provides suppliers with the historical usage and TCQ data in a quick, seamless manner. Because the account number and meter number are required, it provides certainty that the supplier is authorized to receive such

data. Unlike the “cumbersome and inefficient” system (D.T.E. 01-54-A, at 10) and conditions that plagued the electricity market at the time that 01-54 was initiated, the introduction of customer choice in the natural gas arena has evolved and operated in a fairly seamless manner for several years. For example, 15% of Berkshire’s C&I customers take service from marketers reflecting approximately 60% of its C&I load. Given this history of success, CES-M has not demonstrated any need for a change to the negotiated T&C nor has CES-M’s letter request even recognized that any decision should properly balance the costs of implementing changes to protocols.

That being said, the Company suggests that if the Department were to adopt a Customer Information List sharing policy, a clear and effective bill message and insert combination be employed during an initial period in order to inform customers that they have the option to have their name removed from any list provided to gas agents or suppliers in advance of the commencement date of such information-sharing. In addition, similar to the practice evoked in D.T.E. 01-54, the Company believes that, as an absolute minimum, any information should only be shared with a licensed gas agent or supplier upon execution of an agreement requiring the supplier not to use the information for any purpose other than to market gas-related services and with severe penalties being imposed for a breach of such covenant. D.T.E. 01-54-A, p. 6 (as noted below, the Company has substantial concerns as to whether this requirement would adequately protect the interests of Berkshire and its customers).

In sum, the CES-M letter request has not demonstrated that any change to the T&C is necessary or appropriate.

**B. The T&C Properly Reflects the Differences Between the Electricity and Natural Gas Industries**

Despite the fact that substantial information is available by reason of rate codes, Berkshire believes that the Department should fully consider customer interests and the differences between the electricity and natural gas industries in considering the CES-M letter

request. First, the inclusion of customer usage levels and capacity assignment numbers on a Customer Information List is of serious concern, especially for commercial and industrial customers. Unlike names, addresses and rate classes, the Company asserts that usage levels and capacity assignment numbers are private and proprietary information for many customers. The Company is cognizant of the fact that some customers may not wish to have their information divulged to any outside party, citing consumer privacy concerns. For commercial and industrial customers in particular, such data may reveal information about business practices and operations

Second, the mechanical application of procedures from the electricity industry does not appropriately reflect differences in the natural gas industry. Simply put, there are generally no competitive alternatives for electricity. Customer elections to secure electricity supply service from a marketer is highly unlikely to result in loss of distribution service for the electric distribution company. The fact that in D.T.E. 01-54 the Department found that certain information relating to electric default service customers not being proprietary is not dispositive. The distribution company is not likely to have any revenue impact and remaining customers are not placed at risk by such election. In the natural gas industry, there are multiple competitive fuels. Indeed, many natural gas marketers also provide (or are fully capable of providing) sales service in competitive fuels such as oil or propane. The practical consequence of the adoption of the suggestion of CES-M is that LDCs will be directly providing competitive customer usage data to entities that are in direct competition or that are not subject to “separation” requirements like those now imposed upon utilities in the Department’s Standards of Conduct. See 220 C.M.R. 12.00. The Company submits that even if an agreement were executed with marketers imposing the requirements of such standards, monitoring and enforcement would be extremely difficult if not impossible. The Company would be in a difficult position to monitor compliance, may not have a meaningful remedy for any marketer breaches and the Department may not have appropriate authority in this area. The consequences would be real and potentially

substantial as unlike the electricity industry, marketers could target customers with alternative fuels resulting in the loss of LDC load and long-term economic harm to remaining customers.

In sum, the fundamental differences in terms of competition within the electricity and natural gas industry render the D.T.E. 01-54 precedent inapt. The Department should recognize this difference and reject the CES-M request.

#### **IV. CONCLUSION**

In summary, Berkshire believes that Customer Information Lists should only include the name, address and rate classification. Changes to the negotiated T&C are not needed nor are they in the best interest of customers. The CES-M letter request has not demonstrated a need for any change to the well-established T&C or satisfied relevant procedural requirements for modifying an approved settlement. If the Department does act, however, customers should be given the meaningful opportunity to effectively and timely “opt-out” of any information sharing prior to the commencement date of such a program and marketers should be held to strict standards with meaningful and substantial penalties for violating these standards.